

## Guidance for Comments on Draft Rule

1. For any comments/suggestions please be specific to each section and sub-section in the draft rules. If there are suggested changes in language or terms, provide suggested alternative language. Rationale for the suggested revisions would be appreciated. The point is that the current draft is the result of the review of many comments and other source materials. If a particular approach or language is viewed as problematic, why? What is a suggested alternative approach that is consistent with the North Dakota Constitution, laws and regulations?
2. The definition of the term “Gift” is directly linked to the current definition of “Gift” in the lobbyist rules. Article XIV, Section 2, excludes campaign contributions from the definition of a gift. Presumably, the goal of Section 2 is to avoid situations that may create undue influence on public officials via a gift given through a lobbyist. Article XIV, Section 3, places limits on the ability of lobbyist to give campaign contributions to a public official, however, states “This prohibition shall not be interpreted to prohibit any person from making a campaign contribution...” Please distinguish between the general conflict of interest rules and quasi-judicial. Quasi-judicial has a clear statement in Article XIV, Section 2, that is addressed in Section 115-04-01-04(2) of the draft rules. Any comments should distinguish between the general conflict of interest rules and quasi-judicial proceedings.
  - a. In the context of the general conflict of interest rules, the draft rules do not propose that a campaign contribution is a Potential Conflict of Interest. If the comment/input is that campaign contributions should or should not be within the definition of a Potential Conflict of Interest rule, why? How do you rectify the language in Article XIV, Section 3, which does not prohibit campaign contributions and, in-fact, does not include campaign contributions as a problematic “gift.” If the right to make campaign contributions to a public official is recognized by Article XIV, how does it then become a Potential Conflict of Interest for a Public Official to do the job for which they were elected.
  - b. While staff and members of the Ethics Commission have researched many sources we have not found examples from other states where the receipt of campaign contributions has been identified as a basis to disqualify a public official. Again, this is in the context of the general conflict of interest rule, not quasi-judicial. Has anyone found another state’s statutes or rules that has addressed conflict of interest requirements in the context of a public official having received a campaign contribution?
  - c. The examples we have found that address potential bias from campaign contributions have been various Codes of Judicial Conduct adopted by

various states, including ND. Has anyone found a good example of the same issue being used as a basis for the disqualification of public officials in quasi-judicial proceedings?

- d. Section 115-04-01-04(5) addresses the factors a neutral decisionmaker should consider in determining whether a campaign contribution rises to the level of creating an appearance of bias. The factors largely come from the North Dakota Code of Judicial Conduct. Any suggestions regarding other factors that might be considered or factors in the draft that should be eliminated? The ND Code of Judicial does not establish a “bright-line” with respect to the level of any particular campaign contribution. Some states set a dollar level and others set a percentage of total. If the view is that some form of bright line should be set, what is it? What sources has the commentator reviewed where this has been applied?
3. Section 115-04-01-01(5) introduces the concept of a neutral making the decision whether a public official has a disqualifying conflict of interest. The goal is to have someone other than the public official with the disclosed issue make the decision as to whether the disclosing public official should be recused or disqualified to handle the matter. Specifically, if the identified “neutrals” are not the correct individuals, why? What are the suggestions as to who the “neutral” should be in the public sector setting? We did add a provision that agencies, commissions, etc., by rule or policy can designate a “neutral” to receive disclosures and evaluate/decide on the recusal/disqualification.
4. All written comments should be submitted to [ethicscommission@nd.gov](mailto:ethicscommission@nd.gov)